

APPEAL NO. 021753  
FILED AUGUST 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 14, 2002. With respect to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on March 8, 2001, with an impairment rating (IR) of 49% as certified by Dr. F, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant did not approve his former attorney's action of accepting the September 28, 1999, date of MMI and 11% IR certified by Dr. H, a doctor to whom the claimant had been referred by his treating doctor. In the alternative, the carrier argues that the hearing officer erred in giving presumptive weight to the designated doctor's certification of MMI and IR because the great weight of the other medical evidence is contrary thereto.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not authorize his former attorney's acceptance of Dr. H's MMI date and 11% IR. The claimant testified that he had no knowledge of the attorney's action of agreeing to Dr. H's MMI date and 11% IR, that he did not authorize the attorney to agree with Dr. H's certification and to withdraw the MMI/IR dispute, and that he fired his attorney after he learned of the attorney's action from the Commission's letter disapproving the purported Benefit Dispute Agreement (TWCC-24). The hearing officer was acting within his province as the sole judge of the weight and credibility of the evidence pursuant to Section 410.165(a) in deciding to credit that testimony over the evidence advanced by the carrier, which it purports demonstrates that the claimant authorized the acceptance of Dr. H's certification. The hearing officer likewise did not err in determining that the purported TWCC-24 was not effective to operate as an agreement. The TWCC-24, which is dated November 18, 1999, was only signed by the claimant's attorney at the time and was not signed by the claimant, the carrier's representative, or an authorized Commission employee. As such, the TWCC-24 very clearly did not satisfy the requirements of Section 410.029 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 147.1 to 147.4 (Rules 147.1 to 147.4). Particularly, the agreement did not comply with Rule 147.3(b), which provides that an "employee's representative shall not sign a written agreement or settlement on behalf of the employee except upon a finding of extraordinary circumstances by the director of the division of hearings." Indeed, the Commission sent a letter dated November 19, 1999, to the claimant's then attorney, the claimant, and the carrier rejecting the proposed agreement. As such, the hearing officer did not err in determining that a binding agreement to accept Dr. H's MMI date and 11% IR was not made.

Lastly, we find no merit in the carrier's assertion that the great weight of the other medical evidence is contrary to the designated doctor's certification. Both of the other doctors who certified MMI and assigned an IR to the claimant specifically noted that, although they thought an IR should be assigned for the claimant's head injury, they were not providing a rating for that injury because they did not believe they were qualified to do so. The hearing officer did not err in determining that two ratings that failed to rate part of the compensable injury did not rise to the level of the great weight of the other medical evidence contrary to the designated doctor's certification of MMI and IR. Thus, he did not err in giving presumptive weight to the designated doctor's certification under Sections 408.122(c) and 408.125(e) and adopting the designated doctor's March 8, 2001, MMI date and the 49% IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge